Early Journal Content on JSTOR, Free to Anyone in the World

This article is one of nearly 500,000 scholarly works digitized and made freely available to everyone in the world by JSTOR.

Known as the Early Journal Content, this set of works include research articles, news, letters, and other writings published in more than 200 of the oldest leading academic journals. The works date from the mid-seventeenth to the early twentieth centuries.

We encourage people to read and share the Early Journal Content openly and to tell others that this resource exists. People may post this content online or redistribute in any way for non-commercial purposes.

Read more about Early Journal Content at http://about.jstor.org/participate-jstor/individuals/early-journal-content.

JSTOR is a digital library of academic journals, books, and primary source objects. JSTOR helps people discover, use, and build upon a wide range of content through a powerful research and teaching platform, and preserves this content for future generations. JSTOR is part of ITHAKA, a not-for-profit organization that also includes Ithaka S+R and Portico. For more information about JSTOR, please contact support@jstor.org.

SPECIFIC PERFORMANCE—STREET PAVING—CONTRACT WITH STREET RAILWAY—DAMAGES.—The Calumet Electric Street Railway Co. made a contract with the complainants, Fogg and Kinney, whereby the Railway Co. agreed to pave a certain street in front of the lots of the complainants. The consideration for the contract, it is alleged, was the damage which would result to the property from the building of the road. The complainants signed a petition to allow the road to be built. The road was built but the street has not been paved. This is a bill to enforce a specific performance of the agreement. *Held*, That the agreement cannot be specifically enforced, and that the court will not retain jurisdiction for the purpose of awarding damages. *Farson* v. *Fogg* (1903) — Ill. — 68 N. E. Rep. 755.

The city of Chicago has control of the streets and the Street Ry. Co. cannot pave such streets without the consent of the city, nor can a court of equity order specific performance in a suit to which the city is not a party. The parties must be presumed to have known that the company could not perform without the consent of the city. This is similar to a suit for specific performance of a contract to convey lands where the complainant knew at the time of filing the bill that the defendant had no title. In these cases it has always been held, that a court of equity will not retain jurisdiction for the purpose of assessing damages. The decision is supported by almost all of the cases where the question has been raised. *Hurlbut* v. *Kantzler*, 112 Ill. 482; *Doan, King & Co.* v. *Mauzey*, 33 Ill. 227; *Stickney* v. *Goudy*, 132 Ill. 213, 23 N. E. 1034. *Kennedy* v. *Hazleton*, 128 U. S. 667, 9 Sup. Ct. 202, 32 L. Ed, 576; *Mack* v. *McIntosh*, 181 Ill. 633, 54 N. E. 1019. POM. EQ. 237 and note. Though damages are sometimes allowed where the complainant did not know of the inability to perform at the time of bringing the suit. *Holland* v. *Anderson*, 38 Mo. 55, 58; *Wiswall* v. *McGovern*, 2 Barb. 270; *Cuff* v. *Dorland*, 55 Id. 481.

TELEGRAM—ERROR IN TRANSMITTING—TELEGRAPH COMPANIES—TORT LIMITING LIABILITY.—Plaintiff was a cotton broker in Vicksburg, selling through representatives in various states. One of the representatives, Reynolds & Co. of Providence, R. I., sent to the plaintiff an unrepeated cipher telegram, stating an offer received by them for 1000 bales of cotton at 8½ cents per pound, the price in cipher being designated by the word "alike." Through the negligence of the defendant company, the price word "alike" was changed to "alive" meaning 8⅝ cents. Plaintiff accepted the offer as delivered to him, to the extent of 500 bales at, as he supposed, 8⅝ cents per pound. The message was one sent upon blanks furnished by the Company and containing stipulations against liability in the case of unrepeated messages, except to the amount of the toll, and against all liability in the case of cipher messages. In this action against the Company, plaintiff alleges negligence, and claims damages one-eighth cent per pound on the 500 bales, amounting to $304.89, *Held*, that the telegraph company was liable for the tort and could not stipulate against its negligence for erroneously transmitting unrepeated or cipher messages as under a constitutional provision of the state they were common carriers. *Postal Tel. & Cable Co.* v. *Wells* (1903), —Miss. — 35 South. Rep. 190.

Telegraph companies, as a general rule, have not been held as common carriers and are not subject to the same liability, though they owe a duty to the public and must receive to the extent of their capacity, all messages clearly written, and transmit them for a reasonable compensation. They may therefore, limit their liability in a reasonable manner by means of reasonable rules and regulations. *Primrose* v. *W. U. Tel. Co.*, 154 U. S. 1; *Birkell* v. *Tel. Co.*, 103 Mich. 361; *McAndrews* v. *Elec. Tel. Co.*, 17 C. B. 3; *Camp* v. *Tel.*

*Co.*, 1 Met. (Ky.) 164, 71 Am. Dec. 461 and note. Such rules and regulations have been held valid whether known to the sender or not. *Tel Co.* v. *Carew*, 15 Mich. 525; *Grinnell* v. *Tel. Co.*, 113 Mass. 299. The authorities are by no means uniform and while the liability may be limited as above, according to the decisions of the English courts, the Supreme Court of the United States and many of the state courts, yet the decisions of many courts hold such regulations void as against public policy, "unjust, unconscionable, without consideration and wholly void." *Tyler* v. *Tel. Co.*, 60 Ill. 421. "Telegraph companies are quasi-public servants. They should no more be allowed to effectually stipulate for exemption from their duty, than should a carrier of passengers or any other party engaged in a public business. Why should they refuse to perform the common duty of care and diligence? Having taken the message and the pay, why should they not do all things necessary (including the repeating) for correct transmission." See *Ayer* v. *Tel. Co.*, 79 Me. 493; *Tel. Co.* v. *Griswold*, 37 Ohio St. 301; *Tel. Co.* v. *Crall*, 38 Kan. 679. The decision of the principal case marks the modern tendency toward a more strict rule of liability as shown in this case, by the adoption of a constitutional provision making telegraph companies liable as common carriers.

TELEGRAMS—FAILURE TO DELIVER—LIMITATION OF LIABILITY.—The plaintiffs were partners engaged in buying and selling horses, in the states of Utah and Wyoming, with their principal place of business in Ogden, Utah. They had about 280 head of horses at Green River, Wyo., which they had bargained to sell to one Searcy at $11.00 per head. B. B. Brooks, one of the partners, sent two messages, one marked "rush," to R. S. Brooks, the other partner, informing him when Searcy would arrive at Green River to receive and pay for the horses. Neither message was delivered, having been negligently laid aside at the sending office, and as a consequence the sale was lost. The company relied in part, upon the usual stipulations printed on the back of its blanks, exempting itself from liability for mistakes or delays in the transmission or delivery or for the non-delivery of any unrepeated message, whether happening by negligence of its servants or otherwise, beyond the amount received for sending the same. In this action for damages of the non-delivery of the messages *Held*, that such a stipulation could not limit the liability of the company, for damages caused by the negligent laying aside of the messages at the transmitting office. *Brooks* v. *W. U. Tel. Co.*—(1903),—Utah—72 Pac. Rep. 499.

While a telegraph company may restrict its liability to a reasonable extent, it cannot escape liability for the consequences of its own negligence in failing to send or deliver the message. See preceding note and *Birney* v. *Tel. Co.*, 18 Md. 341; *Tel. Co.* v. *Collins*, 45 Kan. 88, 10 L. R. A. 515; *Mentzer* v. *Tel. Co.*, 93 Ia. 752; COOLEY ON TORTS (2nd Ed.) 775.

TELEGRAMS—NON-DELIVERY—NEGLIGENCE—MENTAL ANGUISH.—The following telegram was sent from Mooresville, N. C., addressed to the plaintiff at Wedgefield, S. C.: "Aunt Hanna Dead. Funeral Sunday. Answer quick." The message was never delivered. The plaintiff lived beyond the free delivery limits, but although her place of residence was known to the operator, the latter wired back, "Party not known." The sender did not know the plaintiff lived beyond the free delivery limits and paid all charges requested at the time the message was sent. In an action for damages, *Held*, It was negligence and bad faith to wire "Party not known" where the sendee's address was known, because extra charges were not paid for delivery outside free limits, that fact being unknown to the sender who paid all charges